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OFFICE OF PETITIONS

In re Application of :
Wood et al. :
Application No. 10/765,215 : **ON PETITION**
Filed: 28 January, 2004 :
Atty Docket No. 034158-047 :

This is a decision on the petition filed on 27 September, 2005, to withdraw the holding of abandonment of the above-identified application.

The petition is **GRANTED**.

The application was held abandoned on 25 May, 2005, for failure to timely respond to the non-final Office action mailed on 24 February, 2005, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 26 September, 2005.

Petitioners assert that the Office action mailed on 24 February, 2005, was never received. A review of the record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioners have submitted a statement from the practitioner, Matthew L. Schneider, attesting to the fact that a review of the docket records indicates that the Office correspondence in question was not received. Petitioners have also included a copy of a docket report.

A review of the Official file reveals that on 5 August, 2004, a declaration in compliance with 37 CFR 1.63 was filed, stating that all correspondence was to be addressed to Customer No. 21839, Burns, Doane, Swecker & Mathis, LLP, P.O. Box 1404, Alexandria, VA 22313-1404. However, the Office action mailed on 24 February, 2005, was not mailed to the address specified in the declaration and change of correspondence address filed on 5 August, 2004. As such, the showing of record is that the Office action was not mailed to the current correspondence address.

The holding of abandonment is withdrawn, the Notice of Abandonment mailed on 26 September, 2005, is vacated.

The correspondence address has now been changed in Office records.

The file is being referred to Technology Center 3700 for the remailing of the Office action originally mailed on 24 February, 2005.

Telephone inquiries concerning the remailing of the Notices should be referred to the Technology Center at 703-272-3700. All other inquiries regarding this decision may be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Petitions Attorney
Office of Petitions